

INTERNAL REVENUE SERVICE

JAN 30, 2001

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Dear [REDACTED]

I am responding to your December 19, 2000, inquiry on behalf of your constituent, [REDACTED]

[REDACTED]. He asks about the tax-free sale of fuels at border crossings.

I believe [REDACTED] primary concern is the sale of the fuels by U.S. duty-free shops on the Canadian border. The IRS has not issued a ruling on this regarding liability for excise taxes (Applicable duties are administered by U.S. Customs). However, the issue is the subject of a refund suit filed in the United States Court of Federal Claims. The plaintiff in the suit claims a refund for the tax on gasoline and diesel fuel it sold at its duty-free store for delivery into vehicles driven into Canada. The Department of Justice is defending the suit and has filed a motion for summary judgment. Although we cannot discuss the details of this case, we hope the following general information will be useful to you.

The Internal Revenue Code imposes a tax on certain removals, entries, and sales of taxable fuel (§ 4081). Taxable fuel means gasoline, diesel fuel, and kerosene (§ 4083).

Under certain circumstances, a credit or refund may be available for excise taxes paid on exported taxable fuel. For example, a payment of tax under § 4081 on gasoline is an overpayment if the person exports the gasoline (§ 6416(b)(2)). If you use diesel fuel taxed under § 4081 for a nontaxable use, which, under § 4041(g) includes a sale for export, you can get a credit or refund if you are the ultimate purchaser of the fuel (§ 6427(l)(1)).

For example, an individual filled the fuel tank of a vehicle that he then drove directly from the United States into Canada. He did not put the gasoline in the fuel tank for the purpose of transporting it from one place to another; it was there as fuel for the vehicle. For purposes of the exemption from manufacturers excise tax on sales for export, the fuel in the tank when the vehicle leaves the United States is a part of the vehicle and not a commodity being exported (Revenue Ruling 69-150, 1969-1 C.B. 286 (copy

enclosed)).

If you have any questions, please contact me at [REDACTED]
[REDACTED]

Sincerely,

Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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